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## BEWARE.

Beware! Beware! for " She is fooling thee. She is fooling thee, Trust her not-Oh, trust her not ! "

This subject is represented by a beautiful young lady sitting in a rustic chair, beneath the overhanging branches of a fine old elm tree; she is faultlessly dressed, with her long, golden ringlets hanging down over her shoulders; in her lap is a shower of beautiful flowers. Near by is a beautiful waterfall, while in the distance tower mountain peaks. Taken as a whole, it is a lovely picture—the beautiful lady in the rustic chair in a thoughtful mood, luxuriant foliage all around, the beautiful flowers, the landscape, with the blue canopy of heaven o'er all combine to form an enchanting scene, and one that cannot fail to satisfy all. No. 2 is a fine Oil Chromo, in 20 colors, size 13 by 18 in-

### Gathering Ferns.

A beautiful girl of eight years is out gathering ferns—she is barefooted, with no hat on her head, the wind playing with her golden locks. She has her apron tull of ferns. It is a beautiful picture of childish beauty and innocence, and cannot fail to find favor in the cycs of all. The coloring of the land-scape is very fine. In the distance is seen the little one's home. The picture, as a whole, is very beautiful and true to nature. It is well worth the price of a year's subscription to the FIRESIDE VISITOR, yet every subscriber gets the VISITOR a year, and the five chromos for the small No. 3 is a fine Oil Chromo in 20 colors, size 13 by 18 inch-

Happy Dreams of Childhood. This Beautiful Chromo represents a sleeping child, a beautiful girl of three years of age. She is sweetly sleeping with her doll clasped in her hands. Over and above her are seen angel forms scattering flowers and blessings on the head of the dear one. Beside her couch is sitting her mother intently watching her child, while her hands have paused in the fancy needle-work on which she is engaged. It is a beautifully sweet picture, and will find a warm place in every mother's heart in the land. The child sleeping so sweetly with a smile hovering around its lips, the angel forms o'er head, the mother watching her dear one, the rich draperies and furniture of the room make a rare picture of loveliness. It is taken from a rare painting by one of the old masters, and cannot fail to be appreciated by all.
No. 4 is a fine Oil Chromo in 20 colors, size 13 by 18 inch-

The Mute Appeal. This subject represents a beautiful Italian girl, dressed in her native costume. She is what is known as a Street Music-ian, and earns her livelihood by her violin and voice. She has played and song to the crowd, and has quietly folded her right arm over and around her violin, while her left arm is outstreeched, thus mutely appealing to the public to give her what they may. It is a lovely picture. The girl, though only a strolling player, is rarely beautiful—the sweet, beseeching expression of the face could but make the most sordid find the expression of the face could but make the most sorded and the way into their pockets, and give her a few pennies. It is one of the richest pictures we have seen for many a day. It is brought out in Oil Colors, and is equal in every respect, to any oil painting, and few can tell whether it is an Oil Chromo or an Oil Painting, so faithfully it is reproduced. To see it is to fall in love with it at once, and every one who sees it, will No. 5 is a fine Oil Chromo in 20 colors. size 13 by 18 inch-

### The Reward!

This is a companion piece to No. 4. It represents a beauti-This is a companion piece to No. 4. It represents a beautiful Italian girl (entirely unlike the other.) She is also a Street Musician, carning her livelihood with her voice and violin; she has played to her audience, and has received her reward in the share of a shining silver piece which she a holding in her hand, while a smile of delight, at her success, howers on her lips, and her face is radiant. It is a very lovely picture. This Chromo alone is worth twice the cost of a year's subscription to the FIRESIDE VISITOR, yet subscribers will receive the FIVE foregoing large Chromos FREE, and the VISITOR a year for a single dollar.

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THE PACIFIC

# Commercial Advertiser.

SUPREME COURT.-IN BANCO. April Term, 1881

HENRY J. AGNEW VS ALBERT MCWAYNE. HARRIS, C. J. JUDD & McCULLY, J. J.

Opinion of the Court by McCully, J. This was an action in the common form for the recovery of money had and received, etc. Upon the trial the plaintiff introduced in evidence (1) a letter dated March 8th, 1881, from plaintiff to defendant, stating that he had placed in defendant's hands \$500, (in checks to defendant's order, which were produced and shown to have been cashed by defendant) prior to September 11th, 1880, as stakes in a horse race to be run on that day, demanding the return of this amount. (2.) defendant's reply March 8th, viz: " I would say the judges (of the races) instructed me to hold the said stake until they rendered their decision in writing. Awaiting that decision, I am forced to decline your request and refuse to deliver you the money." (3.) Letter from plaintiff's attorney to defendant of same date, making a demand with intimation of legal proceedings. (4.) Reply March 9th, of defendant's attorney to plaintiff's attorney, " that he, defendant, declines and will decline to deliver the said cheques to any person until the judges (of races) to whom the whole matter has been referred shall have decided to whom they belong.

Plaintiff being on the stand to prove copy of his letter was asked in cross examination if the judges had not made a decision, answered that they had made a verbal decision at the time of the race and in favor of the horse which ran against his own.

The Court instructed the jury that the plaintiff might recover money which he had deposited, it being still in the hands of the stakeholder, and the defendants and his attorney's letters, with nothing to contradict them, showed that the stakeholder had the money in his hands on the 8th of March when it was demanded of him, yet the jury retired and returned with a verdict for defendant. Whereupon the plaintiff moved the Court to set aside the verdict and grant a new trial, and the Court considering that the jury had been in effect instructed to find for the plaintiff, and that if the instructions were correct there was nothing for a jury to deliberate upon, ordered the verdict set aside and judgment to be entered for plaintiff non obstante verdicto. Whereupon the defendant brings the matter up by bill of exceptions as follows: . Be it remembered that on the trial of the

above case the defendant asked for the following The Scholastic Year consists of two sessions, each comprising " 1. The defendant moves the Court to instruct the jury that betting on racing or trotting on the Kapiolani Park is not prohibited by law and does not come under the general law upon

" 2. That trotting horses on said race course is not a game as contemplated by chapter XXXIX of the Penal Code.

"3. That defendant had a legal right to hold the stakes and to pay them over to the winner on the decision of the judges communicated to him. "4. That the decision of the judges of said trotting races being rendered in favor of McClellan, plaintiff is barred from recovering against the defendant. .. Which said instructions the Court declined to

give, to which decision of the Court the defendant excepted, and in lieu of said instructions the Court instructed the jury as follows: "That the money deposited in the hands of the stakeholder and held, six months after the event, might be recovered in an action for money had and received and therefore it was unnecessary to give instruction 1 and 2, declined to give instruc-

tion 3. Instruction 4 is a matter of testimony and contrary to it, vide McWayne's letter of 6th March, 1881 To which instructions of the Court the deiendant excepted.' We understand that a wager is valid at common law unless affected with some special cause of invalidity, such as being of a nature to wound or prejudice the feelings of interests of individuals, or as being contrary to public policy but that as the moral sense of the present day regards all gaming or wagering contracts as inconsistent with the interest of the community and contra bonos mores, the exceptions tend to become the rule, and it is accordingly held in many of the courts of the United States that all contracts of wager are invalid, and in others where a recovery is theoretically allowed it is seldom permitted in

practice and in some states all wagering or gaming contracts have been prohibited. See Smith's Leading Cases, vol. 2. pages 281-2. Our own Statute of gaming provides, Section 1. Whoever by playing at cards or any other game wins or loses any sum of money or thing of

value is guilty of gaming.

Section 5. Whoever shall by playing at cards or any other game, or by betting on the sides or hands of such as do play, lose any sum of money or thing of value, and shall pay or deliver the same or any part thereof, may sue for and recover the money or value of the thing so lost and paid or delivered, from the winner thereof.

Compare with these the English Statutes, 16 Car. 2, c. 7 s 3, which enacts that if any one shall play at any pastimo or game, by gaming or betting upon those who game and shall lose more than the sum of £100 on credit he shall not be bound to pay, and any contract to do so shall be void, and the 9th Anne C. 14, (the principal enactment) provides that all securities for money or any other valuable thing won by gaming or playing at cards, dice tables, bowls, or other game whatever or by betting on those who game,

etc., shall be void. But a horse race is a game within the meaning of these acts of Parliament, See Smith on Contracts, and authorities cited page 250, and accordingly subsequent acts were pased in 13 Geo. and 3 Victoria to legalize horse racing for stakes, with some limitations, thereby excepting them from the operation of the older statutes.

The language of our statute, conforms almost

literally with the Statute of 9th Anne above cited. But it seems to us in the case at bar it is not necessary to consider if a bet paid on the event of a race could be recovered from the winner by force of the statute. The plaintiff's stake had not been paid over, but was in the hands of the stakebolder, the defendant. The contract between the JOB PRINTER! plaintiff and Mc Clellan was still executory, not executed. "The stakeholder is a mere depositary of both parties for the money deposited by them respectively with a naked anthority to del iver it over on the proposed contingency. If the authority is actually revoked before the money is paid over it remains a naked deposit to the use of the depositor" is the language of Chief Justice Shaw in Ball vs. Gilbert g. Trustee 12 Met. 403. citing 5 T. R 405 and 7 T. R. 535. The stake holder is therefore the agent for a certain purpose, withdraws and countermands his instruction. He to. Private residence, 110 Hotel street. has received the money without consideration. He is not a party to the contract. He cannot be liable to pay to Mc Clellan for a stake which is not in his hand, and it is equally clear that he cannot hold it for himself. If Mc Clellan has any rights it must be on his contract with the Plaintiff Such being the attitude of a stake holder if he refuses to return stakes to either party recalling his deposit the demand may be enforced in an

We therefore hold that the court below properly instructed the jury to return a verdict for the plaintiff. The jury disregarding the instruction must have deemed it in their province to consider which of the betting parties had won the race and and taking the plaintiff's testimony that the race judges had given some decision at the conclusion of the race, in favor of his opponent rendered a verdict for the defendant. But no question which horse had won the race was allowed by the court to go to the jury, in order to determine the payment of the money bet. If this were permitted in any degree the consequences might become most upseemly. The court and jury must come to cons der the rules of the turl and the usages of would respectfully notify the inhabitants of this Kingdom that | betting men. In a contested race it must consider if the stort was lawful, the weights, what had been agreed on, the running fair, the time announced truly, with every other circumstance of fair or tricky dealing which may come out of a public horse race. We may use the language of Mr. Justice Parker in Amory vs. Gilman 2 Mass. 5. which was a wager insurance policy case. "It would seem a disgraceful occupation for the courte of any country to sit in judgment between

two gamblers in order to decide which was the best calculator of chances, or which had the most cunning of the two. There could be but one step of degradation below this, which is that the judges

should be the stake holders of the parties. As therefore we sustain the instruction given by the court, and as the verdict was expressly contrary to the law so given and to the uncontested facts, we are of opinion that the court was right in setting aside the verdict, and as there was no question upon the fact that the defendant held the plaintiff's deposit at the date of demand, we are of opinion that it was proper to order judgment for the plaintiff. non obstante veredicto. Cui bono another trial? There is nothing for the jury to consider and pass upon under the facts and the law as we find it. This was the doctrine of the Court in Kaia vs. Kamaile October Term 1880. Exceptions overruled.

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17 I hold myself personally responsible for ALL GOODS entrusted to my care, and assure all my patrons of perfeccurity of their goods.

\$6,000 \$6,000 EXCLUSIVE OPENING

# MAMMOTH

DRY GOODS, FANCY GOODS, CLOTHING, CENT'S FURNISHING COODS, ALL DIRECT FROM NEW YORK, PHILADELPHIA AND EUROPE.

Popular Prices and Square Dealing! I invite the public to examine my Magnificent Stock of European and American Dry Goods, Largest and Best Selected Stock in the City of Honolulu

My Prices for perfectly FRESH, NEW FABRICS are positively lower than are charged by other Houses for OLD, SHOPWORN, SOILED GOODS, under the guise of SELLING OFF! Don't be Deceived, Come and Examine for Yourself! EXAMINE MY BEAUTIFUL ASSORTMENT OF

Goods, Underwear, Hosiery, Fancy Goods TRIMMINGS, CLOTHING & CENTS' FURNISHING COODS. FA New Line of GENTS' CLOTHING at GREAT BARGAINS

I invite a careful inspection of my Goods and Prices. NO TROUBLE TO SHOW GOODS.

Orders from the country carefully executed. CHAS. J. FISHEL,

California One Price Bazar, CORNER OF FORT AND HOTEL STREETS.

EXTRA.

The Latest Edition! The Greatest Bargains of the Season!

SUPERIOR DURHAM COWS At A. M. MELLIS', 104 Fort Street, Brewer's Block,

Greater inducements than ever before known on these Islands, will be given at my NEW STORE, in order to relieve my Stock previous to taking Inventory of Stock

EXTRAORDINARY INDUCEMENTS

OFFERED THIS WEEK! TO EFFECT A ---

POSITIVE CLEARANCE & THIRTY DAYS BARGAINS IN DRESS GOODS, BARGAINS IN MOSIERY, BARGAINS IN LACES. BARGAINS IN LINEN HANDKERCHIEFS. BARGAINS IN RIBBONS. BARGAINS IN GENTS' and BOY'S WHITE and COLORED SHIRTS. BARGAINS IN GENTS' and SOY'S WELTE and COLORED STRAW HATS

TABLE LINENS, CRASH, CANTON FLANNELS, WRITE & COLORED FLANNELS, DRILLINGS, CRETONS

And a Large Stock of Fancy Articles.

BARGAINS IN BLEACHED and BROWN MUSLINS.

BARGAINS IN HOUSE FURNISHING GOODS.

AT A GREAT SACRIFICE! FROM REGULAR PRICES WHICH ADMIT OF NO COMPETITION. These include Remnants of Dress Goods in all Grades. All Goods Reduced 25 Per Cent. Below Former Prices!

> At A. M. MELLIS', 104 Fort Street, Brewer's Block, Honolulu, H. I CHAS. T. GULICK

NOTARY PUBLIC. For the Island of Oahu.

Marine Protests Noted & Extended, and Survey Papers Drawn. AGENT to take ACKNOWLEDGMENTS to LABOR CONTRACTS For the District of Kona, Oahu,

REAL ESTATE AND GENERAL BUSINESS AGENT.

Real Estate and property of every description on any of the Islands, bought, sold, and negotiated, and intending buyers and sellers will do well to intrust their business to my care.

Deeds, Mortgages, Leases, Wills and other legal documents drawn at shortest notice, and at

BLACKSMITH AND MACHINIST. Records Searched for Titles of all Lands Bought or Sold. Blanks for Labor Contracts and other business, of the latest and most improved forms, constantly on hand and for sale. OFFICE-No. 1 Kaahumanu Street, Honolulu. RESIDENCE-No. 111 King Street.

Business attended to at either Office or Residence FOR SALE! 36 CASES OF LIME JUICE, 1-QUART BOTTLES. 80 TINS COFFEE, 12 LBS. EACM,

1 CHEST TEA,

1 CASK OLIVE OIL,

50 RUM PUNCHEONS,

40 IRON TANKS, 400 GALLONS EACH,

50,000 Bricks.

And Sundry Stockil Stores too numerous to mention, ply to the Captain on board the "Highfiyer."

ON REASONABLE TERMS. Also, for Sale, Imported Horses, Buggies,

Harnesses and Whips, AT W'ELIAM LEVY'S PONY STABLES. ON KING STREET.

Ap- FANCY, FAST AND GENTLE HORSES!

R. H. FOWLER.